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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 206

Docket ID FEMA-2010-0035

RIN 1660-AA68

Housing Assistance Due to Structural Damage

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Under the authority of section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), the Federal Emergency Management Agency (FEMA) provides financial assistance to individuals and households to repair or replace their homes after a Presidentially-declared major disaster or emergency. This rule finalizes revisions to FEMA's repair, replacement, and housing construction assistance regulations that clarify the eligibility criteria for assistance and implement changes to section 408 of the Stafford Act that were made by the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA).

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: John Carleton, FEMA, Individual Assistance Division, 500 C Street, SW., Washington, DC 20472-3100, (phone) 202-212-1000, (facsimile) (202) 212-1005, or (email) FEMA-IA-Regulations@fema.dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) provides the Federal Emergency Management Agency (FEMA) with the authority to administer the Individuals and Households program (IHP). See 42 U.S.C. 5174. Through the IHP, FEMA provides financial and/or direct assistance to help survivors recover from Presidentially-declared emergencies and major disasters. This help may be in the form of housing assistance as well as assistance to meet “other needs” such as medical, dental, funeral, and personal property.

Specifically, FEMA provides the following types of housing assistance:

Temporary Housing: Financial assistance is available to rent a different place to live for a limited period of time. When rental properties are not available, FEMA may provide direct assistance in the form of a temporary housing unit.

Housing Repair: Financial assistance is available to homeowners to repair disaster damage to their primary residence. Assistance is only available to repair damage that is not covered by insurance. The goal is to make the damaged home safe, sanitary, and functional.

Housing Replacement: Financial assistance is available to homeowners to replace their primary residence if it was destroyed in the disaster. Assistance is only available for damage that is not covered by insurance.

Permanent and Semi-Permanent Housing Construction: In exceptional circumstances, FEMA is authorized to provide permanent and semi-permanent housing construction. If FEMA exercises its discretion to offer this form of disaster assistance, FEMA may provide financial assistance for the construction of a

home, or may construct the new permanent or semi-permanent housing unit for an individual or household. This type of assistance is currently provided only in insular areas or locations specified by FEMA where no other type of housing assistance is available, feasible, or cost-effective. Assistance is provided only for damage that is not covered by insurance.

The regulations establishing the types of IHP assistance available, the eligibility requirements for assistance, and the procedures for obtaining assistance are in 44 CFR part 206, subparts D and F.

On September 30, 2002, FEMA published an interim rule in the Federal Register, which revised its regulations implementing the IHP. See 67 FR 61446. FEMA published a correction to the interim rule on October 9, 2002. See 67 FR 62896. Among other things, the interim rule established the housing repair, replacement, and construction eligibility regulations in 44 CFR 206.117. These regulations are currently in effect, with minor amendments. See 74 FR 15328 (Apr. 3, 2009).

On July 30, 2012, FEMA published a notice of proposed rulemaking (NPRM), which addressed the public comments received on the 2002 interim rule related to housing repair and replacement. See 77 FR 44562. In addition, the NPRM proposed revisions intended to clarify and improve FEMA's eligibility requirements for housing repair assistance as well as implement and codify PKEMRA legislative changes made after the interim rule was published.

II. Summary of the Proposed Rule

In the NPRM, FEMA proposed four separate sets of changes. First, FEMA proposed revisions to the interim rule to respond to public comments received on the

2002 interim rule. Second, FEMA proposed changes that were intended to restate the existing requirements more clearly and in greater detail, without substantively changing the underlying requirements. Third, consistent with statutory amendments in the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA), FEMA proposed removing the housing repair and replacement subcaps. Finally, also consistent with statutory amendments in PKEMRA, FEMA proposed adding the term “semi-permanent” and removing the term “remote” with respect to the eligibility requirements for housing construction pursuant to PKEMRA.

This final rule codifies the above changes as discussed in the NPRM. For additional background information on these proposed changes, please refer to the NPRM.

III. Discussion of Comments Received on the Notice of Proposed Rulemaking

FEMA received two written comments in response to the NPRM. The first commenter stated that FEMA’s regulations should be clearer. The commenter expressed that FEMA must be able to make things as clear as possible for disaster survivors.

The second commenter raised four separate points in its comment. First, the commenter noted that since FEMA was no longer applying the housing repair and replacement subcaps and allowing applicants to have the maximum IHP award for housing assistance, there would be no additional money available to award for Other Needs Assistance (ONA). The commenter asked whether an additional amount, such as \$3,000, can be available to applicants for ONA. FEMA understands the commenter’s concern; however, FEMA does not have the authority to award an additional amount (\$3,000) for ONA above and beyond the statutorily established program limit.

Second, the commenter thanked FEMA for clarifying the IHP housing repair assistance eligibility requirements and stated that the proposed changes will help to simplify the process for IHP assistance.

Third, the commenter noted that under proposed § 206.117(b)(3)(i)(C) and (E), FEMA proposed that to be eligible for housing replacement assistance, the residence must have been destroyed, and repair must be either infeasible, insufficient to ensure the safety or health of the occupant, or insufficient to make the residence functional. The commenter suggested that FEMA include an exception to this rule, so that if the cost to repair exceeds the cost to rebuild, the applicant should be granted replacement assistance even if FEMA did not deem all parts of the dwelling's structure destroyed.

FEMA's Individual and Households Program records and verifies disaster-related damages based on a FEMA home inspection. Based on the home inspection, FEMA makes a determination regarding the amount of damage that a dwelling has sustained. If the dwelling is deemed destroyed, then the applicant could receive replacement assistance up to the maximum grant amount. If the dwelling sustained significant damage and is determined to be repairable, then the applicant could still receive up to the maximum grant amount to repair the dwelling. FEMA notes that the distinction between repair and replacement assistance has no effect on the maximum amount of assistance that FEMA can award a disaster survivor. The maximum IHP grant amount that a disaster survivor may receive in fiscal year 2014 is \$32,400 per declared event (78 FR 64523, Oct. 29, 2013).

In the scenario suggested by the commenter, where the cost to repair exceeds the cost to rebuild, an (uninsured) applicant would most likely be receiving a maximum

award regardless. Thus the distinction between repair and replacement assistance would have no effect on the cost effectiveness. Moreover, if a disaster survivor determines that they want to rebuild their dwelling rather than repair, the disaster survivor is allowed to use their repair assistance towards replacing their dwelling.

The last point by the second commenter suggested that FEMA add a requirement in the final rule to do a cost-benefit analysis to determine the type of housing that would be the most cost effective and mindful of taxpayer dollars; for example, if the costs of building a community site for temporary housing units (THUs) exceeds the costs of semi-permanent housing construction, then semi-permanent housing should be utilized. FEMA is statutorily required under Section 408(b)(2)(A) of the Stafford Act to determine the appropriate types of housing assistance “based on considerations of cost effectiveness, convenience to the individuals and households, and such other factors...”; a requirement in the final rule is therefore not necessary. See 42 U.S.C. 5174. FEMA currently has a process for evaluating the appropriate type of housing based on a number of factors, one of which is the cost effectiveness of the housing option. In addition, FEMA weighs housing options based on the geographical area affected by the disaster, the delivery speed of housing options, the availability of housing resources in the affected area, and various other considerations.

IV. Records Management

The Regulation Identifier Number (RIN) listed in the September 30, 2002 interim rule and the correction to the interim rule was 3067-AD25. When FEMA became a component of the Department of Homeland Security (DHS) in 2003, FEMA’s RINs were renumbered, and 3067-AD25 became 1660-AA18.

The Docket ID for 1660-AA18 is FEMA-2008-0005. All of 1660-AA18's public submissions, supporting and related documents, and rules are posted to Docket ID FEMA-2008-0005. The public comments that addressed housing repair assistance, the subject of this rulemaking, have also been posted to Docket ID FEMA-2010-0035.

V. Regulatory Analysis

A. Executive Order 12866, Regulatory Planning and Review and Executive Order 13563, Improving Regulation and Regulatory Review

FEMA has prepared and reviewed this rule consistent with Executive Order 12866, Regulatory Planning and Review (58 FR 51735, Oct. 4, 1993) as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review (76 FR 3821, Jan. 18, 2011). This final rule is not a significant regulatory action, and therefore has not been reviewed by the Office of Management and Budget (OMB).

This final rule provides clarification with respect to the eligibility for housing repair assistance, without adding new requirements, as well as implements changes to section 408 of the Stafford Act made by PKEMRA. See 42 U.S.C. 5174. This rule does not impose any additional burden on the public or change the total amount of assistance available to individuals and households since this rule merely codifies FEMA practice since 2006.

The changes resulting from PKEMRA (a) revise the regulations to align with PKEMRA's removal of the housing repair and replacement subcaps; (b) remove the limitation that housing construction assistance be provided only in a "remote" area, if the location is not otherwise insular (outside the continental United States); and (c)

incorporate FEMA's new authority to provide assistance for the construction of "semi-permanent" housing.

When the current regulations were written, the Disaster Mitigation Act of 2000 prohibited FEMA from providing more than \$5,000 (adjusted annually to reflect changes in the Consumer Price Index (CPI)) for repair assistance, and more than \$10,000 (adjusted annually to reflect changes in the CPI) for replacement assistance. These subcaps prevented applicants from spending other available IHP assistance (in fiscal year 2014, the overall cap on financial assistance is \$32,400 per declared event (78 FR 64523, Oct. 29, 2013)) on housing repair or replacement. The change in PKEMRA was self-implementing and immediately went into effect. FEMA is no longer required to apply subcaps and has not applied them since PKEMRA became law in 2006. This rule change is intended to revise the regulations to conform to the statutory change and FEMA's current practice. It does not change the eligibility criteria and does not reduce the total amount of assistance available to individuals and households. This rule does not have an economic impact because it merely codifies FEMA current practice.

This rule also removes the term "remote" from 44 CFR 206.117(b)(3) to implement new authority to provide housing construction assistance in areas within the continental United States where alternative housing resources are not available, infeasible, or not cost effective. The 2002 interim rule limited this type of assistance to only locations that are insular or remote. This rule change implements PKEMRA by providing housing construction assistance to disaster survivors in areas where alternative housing resources are not feasible. This rule change provides more flexibility for FEMA to meet the housing needs for disaster survivors, although it is expected that FEMA will

only rarely exercise this authority. This is because alternative housing resources, such as rental units, manufactured housing, recreational vehicles, other readily fabricated dwellings, or FEMA-provided temporary housing units, typically are available within the continental United States. This change is not expected to have a significant economic impact or to negatively affect the eligibility criteria for assistance. Any economic impact from this rule change would be an increase in Federal financial assistance provided to individuals and households to provide housing in those extremely rare cases where alternative housing resources are unavailable, infeasible, or not cost effective. There would be no increased burden imposed on the public from this proposed change. There is no economic impact to this change because this rule merely codifies FEMA current practice since 2006.

This rule also adds “semi-permanent” to the types of housing that could be constructed. This type of housing would have a life expectancy of more than 5 years, but less than 25 years. While FEMA already provides temporary and permanent housing, by implementing this new authority, FEMA would have greater flexibility to meet the needs of a particular community, where the construction of a type of housing other than a long-term permanent structure may be more appropriate. Although this rule change is likely to provide more flexibility for FEMA to meet the housing needs for disaster survivors, it is not expected that FEMA will regularly exercise this authority. This proposed rule change would implement PKEMRA by giving FEMA more options in providing housing assistance to disaster survivors. It would not reduce the number of individuals or households eligible for housing assistance and would not affect eligibility requirements.

There is no economic impact to this proposed change because this proposed rule merely codifies current FEMA practice.

B. Paperwork Reduction Act of 1995

FEMA determined that this proposed rule will not create a new collection of information or create a revision to an existing collection of information under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501-3520. All information submitted by applicants seeking IHP housing assistance, including information submitted on appeal, is included in Office of Management and Budget (OMB) approved collections.

The following collections related to IHP have been approved by OMB under the following titles and control numbers: “Disaster Assistance Registration,” OMB control number 1660-0002, expiration date July 31, 2015 and “Federal Assistance to Individuals and Households Program (IHP),” OMB control number 1660-0061, expiration date October 31, 2014. There would be no additional paperwork burden as a result of the changes proposed in this rule.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121, 110 Stat. 857), FEMA must consider the impact of this proposed regulation on small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This final rule clarifies the eligibility criteria for housing repair, replacement, and construction assistance to individuals and households. It will not have an economic impact on small

entities because it merely codifies FEMA current practice since PKEMRA became law in 2006. FEMA certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

D. Privacy Act

The Privacy Act of 1974, 5 U.S.C. 552a, establishes a code of fair information practices that governs the collection, maintenance, use, and dissemination of personally identifiable information about individuals that is maintained in systems of records by Federal agencies. A system of records is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifier assigned to the individual. FEMA, in partnership with other Federal agencies, hosts a single application and resource center at <http://www.disasterassistance.gov> that allows the public to apply for disaster assistance, benefits, and other services within FEMA and other Federal agencies. This application and resource center contains personally identifiable information about IHP applicants seeking housing repair, replacement, or construction assistance. The application resource center is included in a Privacy Act System of Records entitled “Disaster Recovery Assistance Files” number “DHS/FEMA-008” which published on April 30, 2013 in the Federal Register at 78 FR 25282. This proposed rule would not change the application materials received or result in a new collection of personally identifiable information about individuals.

E. National Environmental Policy Act

Under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., an agency must prepare an environmental assessment and environmental impact statement for any rulemaking that significantly affects the quality of the human

environment. FEMA has determined that this rulemaking does not significantly affect the quality of the human environment and consequently has not prepared an environmental assessment or environmental impact statement. Most activities under section 408 and prior section 411 of the Stafford Act pertaining to temporary housing and financial assistance are categorically excluded from NEPA review under 44 CFR 10.8(d)(2)(xix)(D) and (F). Before undertaking other activities that are not categorically excluded (e.g., placement of manufactured temporary housing units on FEMA-constructed group sites; permanent or semi-permanent housing construction), FEMA follows the procedures set forth in 44 CFR part 10 to assure NEPA compliance.

F. Executive Order 13132, Federalism

Executive Order 13132, Federalism, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. See Executive Order 13132, 64 FR 43255, Aug. 10, 1999. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action. The disaster assistance addressed by this proposed rule is provided to individuals and households, and would not have federalism implications.

G. Executive Orders 11988 and 11990, Floodplain Management and Protection of Wetlands

Under Executive Order 11988, Floodplain Management, as amended, Federal agencies are required to “provide leadership to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains.” See Executive Order 11988, as amended, 42 FR 26951, May 25, 1977, 44 FR 43239, July 20, 1979. Under Executive Order 11990, Protection of Wetlands, Federal agencies are required to “provide leadership and ... take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency’s responsibilities.” See Executive Order 11990, as amended, 42 FR 26961, May 25, 1977, 52 FR 34617, Sept. 14, 1987. The requirements of these Executive Orders apply in the context of the provision of Federal financial assistance relating to, among other things, construction and property improvement activities, as well as conducting Federal programs affecting land use. The changes proposed in this rule would not have an effect on land use, floodplain management or wetlands. When FEMA undertakes specific actions that may have such effects (e.g., placement of manufactured temporary housing units on FEMA-constructed group sites; permanent or semi-permanent housing construction), FEMA follows the procedures set forth in 44 CFR part 9 to assure compliance with these Executive Orders.

H. Executive Order 13045, Protection of Children From Environmental Health Risk and Safety Risks

FEMA has analyzed this final rule under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks, 62 FR 19883, Apr. 23, 1997. This rule is not an economically significant rule and would not create an

environmental risk to health or safety that might disproportionately affect children.

I. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501 et seq., pertains to any proposed rulemaking which implements any rule that includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. The Act also applies to any regulatory requirements that might significantly or uniquely affect small governments. FEMA has determined that this proposed rule would not result in the expenditure by State, local and Tribal governments, in the aggregate, nor by the private sector, of \$100,000,000 or more in any one year as a result of a Federal mandate, nor would it significantly or uniquely affect small governments.

J. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, FEMA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the Tribal government, or FEMA consults with those governments. See Executive Order 13175, 65 FR 67249, Nov. 9, 2000. This final rule would not significantly or uniquely affect the communities of Indian Tribal governments, nor would this proposed rulemaking impose substantial direct compliance costs on those communities.

K. Executive Order 12898, Environmental Justice

Under Executive Order 12898, Environmental Justice, each Federal agency must conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in, denying persons the benefit of, or subjecting persons to discrimination because of their race, color, or national origin.

See Executive Order 12898, 59 FR 7629, Feb. 16, 1994. FEMA has incorporated environmental justice into its policies and programs.

The housing repair, replacement and construction assistance regulations intentionally contain provisions that ensure they would not have a disproportionately high and adverse human health effect on any segment of the population. This rulemaking clarifies the eligibility requirements for assistance, and in doing so, maintains focus on the functionality of the component being repaired or replaced, and does not consider income or home value. Section 408 of the Stafford Act requires that such assistance be granted only for damage caused by a disaster event. Non-disaster related damage is not eligible for assistance under the Stafford Act. To ensure that this limitation will not be improperly exclusive, this final rule clarifies that components being repaired or residences being replaced need not be in full working order before the event to qualify for assistance. Components or residences that were fully or partially functional immediately before the declared event, despite their need for maintenance, may be eligible for repair assistance if they ceased to function as a result of the disaster.

FEMA received a comment on the 2002 interim rule, identified by Regulation Identifier Number (RIN) 1660-AA18, that stated the interim rule did not overtly

discriminate against disaster survivors based on race, color, or national origin, but that it did discriminate covertly against those who are financially challenged, and, to the extent that the financially challenged consist disproportionately of minority groups, one might conclude that an element of the IHP program lacks environmental justice. The commenter stated that the housing repair cap of \$5,000 has a gross negative impact on low-income disaster survivors, and results in more low-income disaster survivors returning to unsafe, unsanitary, and/or non-functional homes. The commenter recommended the liberal use of replacement assistance to provide additional help for the financially challenged.

FEMA addressed this comment in the notice of proposed rulemaking (NPRM) that published in the Federal Register, on July 30, 2012. See 77 FR 44562. The \$5,000 subcap is no longer in effect, and individuals and households may use up to the full amount of IHP funds (\$32,400 for fiscal year 2014) for eligible repair and replacement assistance. See 78 FR 64523 (Oct. 29, 2013). This figure is adjusted annually to reflect changes in the Consumer Price Index (CPI).

No action that FEMA can anticipate under this final rule would have a disproportionately high and adverse human health effect on any segment of the population. In addition, the rulemaking would not impose substantial direct compliance costs on those communities.

L. Executive Order 12988, Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. See Executive Order 12988, 61 FR 4729, Feb. 7, 1996.

M. Executive Order 12630, Governmental Actions and Interference With
Constitutionally Protected Property Rights

FEMA has reviewed this rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, as supplemented by Executive Order 13406, Protecting the Property Rights of the American People. See Executive Order 12630, 53 FR 8859, Mar. 18, 1988 and Executive Order 13406, 71 FR 36973, June 28, 2006. This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs-housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs-housing and community development, Natural resources, Penalties, and Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Federal Emergency Management Agency amends 44 CFR part 206 as follows:

PART 206—FEDERAL DISASTER ASSISTANCE

1. The authority citation for part 206 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Homeland Security Act of 2002, 6 U.S.C. 101 et seq.; Department of Homeland Security Delegation 9001.1; sec. 1105, Pub. L. 113-2, 127 Stat. 43 (42 U.S.C. 5189a note).

2. Amend § 206.117 by revising paragraphs (a) and (b)(2) through (4) and removing paragraph (c).

The revisions read as follows:

§ 206.117 Housing assistance.

(a) Definitions. The definitions in this paragraph apply to this section only.

“Caused by the disaster” means as a direct result of a peril identified in the Federal Register Notice of a Presidentially-declared major disaster or emergency, the component is no longer functional.

“Real Property Component” or “Component” means each individual part of a dwelling that makes it habitable, as enumerated in paragraph (b)(2)(ii) of this section.

“Semi-Permanent Housing” means housing designed and constructed with finishes, material, and systems selected for moderate (or better) energy efficiency, maintenance, and life cycle cost, and with a life expectancy of more than 5 years but less than 25 years.

(b) * * *

(2) Repairs. (i) FEMA may provide financial assistance for the repair of real property components in an owner’s primary residence if:

- (A) The eligibility criteria in § 206.113 are met;
- (B) The component was functional immediately before the declared event;
- (C) The component was damaged, and the damage was caused by the disaster;
- (D) The damage to the component is not covered by insurance; and
- (E) Repair of the component is necessary to ensure the safety or health of the occupant or to make the residence functional.

(ii) FEMA may provide financial assistance for the repair of:

- (A) Structural components of the residence. This includes real property components, such as the foundation, exterior walls, and roof.
 - (B) Windows and doors.
 - (C) The Heating, Ventilation and Air Conditioning system.
 - (D) Utility systems. This includes electrical, gas, water and sewage systems.
 - (E) Interior components. This includes, but is not limited to, the structure's floors, walls, ceilings, and cabinetry.
 - (F) The structure's access and egress, including privately owned access roads and privately owned bridges.
 - (G) Blocking, leveling, and anchoring of a mobile home, and reconnecting or resetting mobile home sewer, water, electrical and fuel lines and tanks.
 - (H) Items or services determined to be eligible hazard mitigation measures that reduce the likelihood of future damage to the residence, utilities, or infrastructure.
- (iii) The components that may be deemed eligible for repair assistance, and the type of repairs authorized, will vary depending upon the nature of the disaster. Repairs are limited to restoration of the dwelling to a safe and sanitary living or functioning condition. Repair assistance will only be provided to the extent that the work makes the component functional. FEMA may provide for the replacement of components if repair is not feasible. The repairs of components must be of average quality, size, and capacity, taking into consideration the needs of the occupant.

(iv) Components that were functional immediately before the declared event may be eligible for repair assistance if the damage to the component was caused by the disaster and the component is no longer functional.

(v) Eligible individuals or households may receive up to the maximum amount of assistance (See § 206.110(b) of this part) to repair damages to their primary residence irrespective of other financial resources, except insurance proceeds.

(vi) The individual or household is responsible for obtaining all local permits or inspections that applicable State or local building codes may require.

(vii) If the applicant disputes a determination made by FEMA regarding eligibility for repair assistance, the applicant may appeal that determination pursuant to the procedures in § 206.115 of this part. In addition to the requirements in §206.115, the applicant must provide proof that the component meets the requirements of paragraph (b)(2)(i) of this section, including that the component was functional before the declared event and proof that the declared event caused the component to stop functioning. If the applicant disputes the amount of repair assistance awarded, the applicant must also provide justification for the amount sought.

(3) Housing replacement. (i) FEMA may provide financial assistance for the replacement of an owner's primary residence if:

- (A) The eligibility criteria in §206.113 of this part are met;
- (B) The residence was functional immediately before the disaster;
- (C) The residence was destroyed, and the damage was caused by, the disaster;
- (D) The damage to the residence is not covered by insurance;

(E) Repair is not feasible, will not ensure the safety or health of the occupant, or will not make the residence functional; and

(F) Replacement is necessary to ensure the safety or health of the occupant.

(ii) All replacement assistance awards must be approved by the Regional Administrator or his/her designee. If replacement assistance is granted, the applicant may either use the maximum amount of assistance (See §206.110(b) of this part) to replace the dwelling in its entirety, or may use the assistance toward the cost of acquiring a new permanent residence.

(iii) Housing replacement assistance will be based on the verified disaster-related level of damage to the dwelling, or the statutory maximum (See §206.110(b) of this part), whichever is less.

(iv) If the applicant disputes a determination made by FEMA regarding eligibility for replacement assistance, the applicant may appeal that determination pursuant to the procedures in §206.115 of this part. In addition to the requirements in §206.115, the applicant must provide proof that repair is not feasible, or will not ensure the safety or health of the occupant or make the residence functional. If the applicant disputes the amount of replacement assistance awarded, the applicant must also provide justification for the amount sought.

(4) Permanent and semi-permanent housing construction. (i) FEMA may provide financial or direct assistance to applicants for the purpose of constructing permanent and semi-permanent housing if:

(A) The eligibility criteria in §206.113 of this part are met;

(B) The residence was functional immediately before the declared event;

(C) The residence was damaged by the event;

(D) The damage to the residence is not covered by insurance;

(E) The residence was an owner-occupied primary residence; and

(F) The residence is located in an insular area outside the continental United States or in another location where alternative housing resources are not available and the types of financial or direct temporary housing assistance described in paragraphs (b)(1), (2), and (3) of this section are unavailable, infeasible, or not cost-effective.

(ii) Permanent and semi-permanent housing construction, in general, must be consistent with current minimal local building codes and standards where they exist, or minimal acceptable construction industry standards in the area, including reasonable hazard mitigation measures, and Federal environmental laws and regulations. Dwellings will be of average quality, size and capacity, taking into consideration the needs of the occupant.

(iii) If the applicant disputes a determination made by FEMA regarding eligibility for construction assistance, the applicant may appeal that determination pursuant to the procedures in §206.115 of this part. In addition to the requirements in §206.115, the applicant must provide proof that the property is either located in an insular area outside the continental United States, or in a location where alternative housing resources are not available. The applicant must also provide proof that the types of financial or direct temporary housing assistance described in paragraph (b)(1) of this section are unavailable, infeasible, or not cost effective. If the applicant disputes the amount of construction assistance awarded, the applicant must also provide justification for the amount sought.

Dated: October 30, 2013.

W. Craig Fugate,
Administrator,
Federal Emergency Management Agency.

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